

By

Flumer

S.B. No. 960

A BILL TO BE ENTITLED

AN ACT

amending Subchapter E, Chapter 5, Water Code, providing for the cancellation in whole or in part of certificates of adjudication by the Texas Water Rights Commission in the same manner as permits and certified filing; providing for the definition of "certificate of adjudication"; providing for the general principle of cancellation of certificates of adjudication, the initiation of proceedings, notice, and hearing thereof; providing for certain findings to be made by the commission and action to be taken; allowing a holder of a permit, certified filing, or certificate of adjudication to retain a reservoir for domestic, livestock, and recreational purposes to the extent that he has conservation storage; exempting those certified filings held by cities to the extent that such filing allows diversion for municipal purposes; declaring that the failure to initiate proceedings to cancel shall not validate or enhance a certified filing, permit, or certificate of adjudication and requiring a five-year lapse between cancellation proceedings against a particular water right; repealing all conflicting laws and providing a savings clause; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subchapter E., Chapter 5, Water Code, is hereby amended to read as follows:

"SUBCHAPTER E. CANCELLATION OF PERMITS,

1 CERTIFIED FILINGS, AND CERTIFICATES
2 OF ADJUDICATION FOR NONUSE

3 "Section 5.171. DEFINITIONS. As used in this subchapter:

4 "(1) 'other interested person' means any person,
5 other than a record holder, who is interested in the permit or
6 certified filing, or any person whose direct interest would be
7 served by the cancellation of the permit or certified filing in
8 whole or in part; ~~and~~

9 "(2) 'certified filing' means a declaration of
10 appropriation or affidavit that was filed with the State Board
11 of Water Engineers under the provisions of Section 14, Chapter
12 171, General Laws, Acts of the 33rd Legislature, 1913; and

13 "(3) 'certificate of adjudication' means a certificate
14 issued by the Texas Water Rights Commission under Section 5.323
15 of this code.

16 "Sec. 5.172. GENERAL PRINCIPLE. A permit, ~~or~~ certified
17 filing, or certificate of adjudication is subject to cancellation
18 in whole or in part for 10 years' nonuse as provided by this
19 subchapter.

20 "Sec. 5.173. CANCELLATION IN WHOLE. If no part of the
21 water authorized to be appropriated under a permit, ~~or~~ certified
22 filing, or certificate of adjudication has been put to beneficial
23 use at any time during the 10-year period immediately preceding
24 the cancellation proceedings authorized by this subchapter, then
25 the appropriation is presumed to have been wilfully abandoned,
26 and the permit, ~~or~~ certified filing, or certificate of
27 adjudication is subject to cancellation in whole as provided by

1 this subchapter.

2 "Sec. 5.174. COMMISSION TO INITIATE PROCEEDINGS. When the
3 commission finds that its records do not show that any water has
4 been beneficially used under a permit, ~~or~~ certified filing, ~~or~~
5 certificate of adjudication during the past 10 years, it shall
6 initiate proceedings, terminated by public hearing, to cancel the
7 permit, ~~or~~ certified filing, ~~or~~ certificate of adjudication.

8 "Sec. 5.175. NOTICE. (a) At least 30 days before the
9 date of the hearing, the commission shall send notice of the
10 hearing to the holder of the permit, ~~or~~ certified filing, ~~or~~
11 certificate of adjudication. ~~Being considered for cancellation~~
12 notice shall be sent by certified mail, return receipt requested,
13 to the last address shown by the records of the commission. The
14 commission shall also send notice by regular mail to all other
15 holders of permits, certified filings, certificates of
16 adjudication, and claims of water rights pursuant to Section 5.303
17 of this code in the same watershed. [as shown by the records of
18 the commission, Notice shall be sent by certified mail, return
19 receipt requested, to the last address shown by the records of
20 the commission. The commission shall also send notice by regular
21 mail to all other holders of permits and certified filings in the
22 same watershed.]

23 "(b) The commission shall also have the notice of the
24 hearing published once a week for two consecutive weeks, at least
25 30 days before the date of the hearing, in a newspaper published
26 in each county in which diversion of water from the source of /
27 supply was authorized or proposed to be made, and in each county

1 in which the water was authorized or proposed to be used, as shown
2 by the records of the commission. If in any such county no
3 newspaper is published, then the notice may be published in a
4 newspaper having general circulation in the county.

5 "Sec. 5.176. HEARING. The commission shall hold a hearing
6 and shall give the holder of the permit, ~~or~~ certified filing,
7 or certificate of adjudication and other interested persons an
8 opportunity to be heard and to present evidence that water has,
9 or has not, been beneficially used for the purposes authorized
10 by the permit, ~~or~~ certified filing, or certificate of
11 adjudication during the 10-year period.

12 "Sec. 5.177. COMMISSION FINDING; ACTION. At the conclusion
13 of the hearing, if the commission finds that no water has been
14 beneficially used for authorized purposes during the 10-year
15 period, the appropriation is deemed to have been wilfully
16 abandoned, of no further force and effect, and the commission
17 shall cancel the permit, ~~or~~ certified filing, or certificate
18 of adjudication.

19 "Sec. 5.178. CANCELLATION IN PART. If some part of the
20 water authorized to be appropriated under a permit, ~~or~~ certified
21 filing, or certificate of adjudication has not been put to
22 beneficial use at any time during the 10-year period immediately
23 preceding the cancellation proceedings authorized by this
24 subchapter, then the permit, ~~or~~ certified filing, or certificate
25 of adjudication is subject to partial cancellation, as provided /
26 by this subchapter, to the extent of the 10 years' nonuse.

27 "Sec. 5.179. COMMISSION MAY INITIATE PROCEEDINGS. When

1 the commission finds that its records do not show proof that some
2 portion of the water has been used during the past 10 years, it
3 may initiate proceedings, terminated by public hearing, to cancel
4 the permit, ~~[or] certified filing, or certificate of adjudication~~
5 in part.

6 "Sec. 5.180. NOTICE. The commission shall give notice of
7 the hearing as provided by Section 5.175 of this code.

8 "Sec. 5.181. HEARING. The Commission shall hold a hearing
9 and shall give the holder of the permit, ~~[or] certified filing,~~
10 ~~or certificate of adjudication~~ and other interested persons an
11 opportunity to be heard and to present evidence on any matter
12 pertinent to the questions at issue.

13 "Sec. 5.182. COMMISSION FINDING; ACTION. (a) At the
14 conclusion of the hearing, the commission shall cancel the permit,
15 ~~[or] certified filing, or certificate of adjudication~~ to the
16 extent that it finds that:

17 "(1) any portion of the water appropriated under the
18 permit, ~~[or] certified filing, or certificate of adjudication~~ has
19 not been put to an authorized beneficial use during the 10-year
20 period;

21 "(2) the holder has not used reasonable diligence
22 in applying the unused portion of the water to an authorized
23 beneficial use; and

24 "(3) the holder has not been justified in the nonuse
25 or does not then have a bona fide intention of putting the unused
26 water to an authorized beneficial use within a reasonable time
27 after the hearing.

1 "(b) In determining what constitutes a reasonable time as
2 used in Subsection (a)(3) of this section, the commission shall
3 give consideration to:

4 "(1) the expenditures made or obligations incurred
5 by the holder in connection with the permit, ~~[or]~~ certified filing,
6 or certificate of adjudication;

7 "(2) the purpose to which the water is to be applied;

8 "(3) the priority of the purpose; and

9 "(4) the amount of time usually necessary to put
10 water to a beneficial use for the same purpose when diligently
11 developed.

12 "Sec. 5.183. RESERVOIR. If the holder of a permit, ~~[or]~~
13 certified filing, or certificate of adjudication has facilities
14 for the storage of water in a reservoir, the commission ~~may~~ ~~[shall]~~
15 allow him to retain the impoundment ~~[water appropriation]~~ to the
16 extent of the conservation storage capacity of the reservoir, for
17 domestic, livestock or recreation purposes.

18 "Sec. 5.184. MUNICIPAL CERTIFIED FILING ~~[PERMIT]~~.
19 Regardless of other provisions of this subchapter, no portion of
20 a certified filing held by a city, town, village, or municipal
21 water district, authorizing the use of water for municipal
22 purposes, shall be cancelled if water has been put to use under
23 the certified filing for municipal purposes at any time during / 6
24 the 10-year period immediately preceding the institution of
25 cancellation proceedings.

26 "Sec. 5.185. EFFECT OF COMMISSION INACTION. Failure of
27 the commission to initiate cancellation proceedings under this

subchapter does not validate or improve the status of any permit,
[or] certified filing, or certificate of adjudication in whole
or in part.

"Sec. 5.186. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT
[PERMIT]. Once cancellation proceedings have been initiated
against a particular permit, [or] certified filing, or certificate
of adjudication and a hearing has been held, the commission shall
not initiate further cancellation proceedings against the same
permit, [or] certified filing, or certificate of adjudication
within the five-year period immediately following the date of the
hearing."

Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict, however, this Act is meant to be cumulative of existing law and is meant to be reconciled with existing law where possible; and should any section or provisions hereof be declared unconstitutional or invalid, such invalidity shall not impair any remaining sections or provisions of this Act, would have been passed as to the remaining portions hereof regardless of the invalidity of any part.

Sec. 3. The fact that the present law does not provide for total and partial cancellation of certificates of adjudication, while permits and certified filings are subject to such proceedings, even though all or a part of the water is not being appropriated and beneficially used thereunder, the fact that a public need exists to make such water available for appropriation and beneficial use, and the further fact that the present law needs to be clarified so as to remove inconsistencies, create an

1 emergency and an imperative public necessity that the
2 constitutional rule requiring bills to be read on three several
3 days in each house be suspended, and this rule is hereby suspended,
4 and that this Act take effect and be in force from and after its
5 passage, and it is so enacted.

1 By: Sherman

S.B. No. 960

2 (In the Senate - May 1, 1973, read first time and referred
3 to Committee on Natural Resources; May 10, 1973, reported
4 favorably; May 10, 1973, sent to printer.)

5 A BILL TO BE ENTITLED

6 AN ACT

7 amending Subchapter E, Chapter 5, Water Code, providing for the
8 cancellation in whole or in part of certificates of adjudication
9 by the Texas Water Rights Commission in the same manner as permits
10 and certified filing; providing for the definition of "certificate
11 of adjudication"; providing for the general principle of
12 cancellation of certificates of adjudication, the initiation of
13 proceedings, notice, and hearing thereof; providing for certain
14 findings to be made by the commission and action to be taken;
15 allowing a holder of a permit, certified filing, or certificate
16 of adjudication to retain a reservoir for domestic, livestock,
17 and recreational purposes to the extent that he has conservation
18 storage; exempting those certified filings held by cities to the
19 extent that such filing allows diversion for municipal purposes;
20 declaring that the failure to initiate proceedings to cancel shall
21 not validate or enhance a certified filing, permit, or certificate
22 of adjudication and requiring a five-year lapse between
23 cancellation proceedings against a particular water right;
24 repealing all conflicting laws and providing a savings clause;
25 and declaring an emergency.

26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

27 Section 1. Subchapter E, Chapter 5, Water Code, is hereby
28 amended to read as follows:

29 "SUBCHAPTER E. CANCELLATION OF PERMITS,
30 CERTIFIED FILINGS, AND CERTIFICATES
31 OF ADJUDICATION FOR NONUSE

32 "Section 5.171. DEFINITIONS. As used in this subchapter:

33 "(1) 'other interested person' means any person,
34 other than a record holder, who is interested in the permit or
35 certified filing, or any person whose direct interest would be
36 served by the cancellation of the permit or certified filing in
37 whole or in part; [and]

38 "(2) 'certified filing' means a declaration of
39 appropriation or affidavit that was filed with the State Board
40 of Water Engineers under the provisions of Section 14, Chapter
41 171, General Laws, Acts of the 33rd Legislature, 1913; and

42 "(3) 'certificate of adjudication' means a certificate
43 issued by the Texas Water Rights Commission under Section 5.323
44 of this code.

45 "Sec. 5.172. GENERAL PRINCIPLE. A permit, [or] certified
46 filing, or certificate of adjudication is subject to cancellation
47 in whole or in part for 10 years' nonuse as provided by this
48 subchapter.

49 "Sec. 5.173. CANCELLATION IN WHOLE. If no part of the
50 water authorized to be appropriated under a permit, [or] certified
51 filing, or certificate of adjudication has been put to beneficial
52 use at any time during the 10-year period immediately preceding
53 the cancellation proceedings authorized by this subchapter, then
54 the appropriation is presumed to have been wilfully abandoned,
55 and the permit, [or] certified filing, or certificate of
56 adjudication is subject to cancellation in whole as provided by
57 this subchapter.

58 "Sec. 5.174. COMMISSION TO INITIATE PROCEEDINGS. When the
59 commission finds that its records do not show that any water has
60 been beneficially used under a permit, [or] certified filing, or
61 certificate of adjudication during the past 10 years, it shall
62 initiate proceedings, terminated by public hearing, to cancel the
63 permit, [or] certified filing, or certificate of adjudication.

64 "Sec. 5.175. NOTICE. (a) At least 30 days before the

1 date of the hearing, the commission shall send notice of the
 2 hearing to the holder of the permit, [or] certified filing, or
 3 certificate of adjudication. Being considered for cancellation
 4 notice shall be sent by certified mail, return receipt requested,
 5 to the last address shown by the records of the commission. The
 6 commission shall also send notice by regular mail to all other
 7 holders of permits, certified filings, certificates of
 8 adjudication, and claims of water rights pursuant to Section 5.303
 9 of this code in the same watershed. ~~[as shown by the records of~~
 10 ~~the commission.--Notice shall be sent by certified mail, return~~
 11 ~~receipt requested, to the last address shown by the records of~~
 12 ~~the commission.--The commission shall also send notice by regular~~
 13 ~~mail to all other holders of permits and certified filings in the~~
 14 ~~same watershed.]~~

15 "(b) The commission shall also have the notice of the
 16 hearing published once a week for two consecutive weeks, at least
 17 30 days before the date of the hearing, in a newspaper published
 18 in each county in which diversion of water from the source of
 19 supply was authorized or proposed to be made, and in each county
 20 in which the water was authorized or proposed to be used, as shown
 21 by the records of the commission. If in any such county no
 22 newspaper is published, then the notice may be published in a
 23 newspaper having general circulation in the county.

24 "Sec. 5.176. HEARING. The commission shall hold a hearing
 25 and shall give the holder of the permit, [or] certified filing,
 26 or certificate of adjudication and other interested persons an
 27 opportunity to be heard and to present evidence that water has,
 28 or has not, been beneficially used for the purposes authorized
 29 by the permit, [or] certified filing, or certificate of
 30 adjudication during the 10-year period.

31 "Sec. 5.177. COMMISSION FINDING; ACTION. At the conclusion
 32 of the hearing, if the commission finds that no water has been
 33 beneficially used for authorized purposes during the 10-year
 34 period, the appropriation is deemed to have been wilfully
 35 abandoned, of no further force and effect, and the commission
 36 shall cancel the permit, [or] certified filing, or certificate
 37 of adjudication.

38 "Sec. 5.178. CANCELLATION IN PART. If some part of the
 39 water authorized to be appropriated under a permit, [or] certified
 40 filing, or certificate of adjudication has not been put to
 41 beneficial use at any time during the 10-year period immediately
 42 preceding the cancellation proceedings authorized by this
 43 subchapter, then the permit, [or] certified filing, or certificate
 44 of adjudication is subject to partial cancellation, as provided
 45 by this subchapter, to the extent of the 10 years' nonuse.

46 "Sec. 5.179. COMMISSION MAY INITIATE PROCEEDINGS. When
 47 the commission finds that its records do not show proof that some
 48 portion of the water has been used during the past 10 years, it
 49 may initiate proceedings, terminated by public hearing, to cancel
 50 the permit, [or] certified filing, or certificate of adjudication
 51 in part.

52 "Sec. 5.180. NOTICE. The commission shall give notice of
 53 the hearing as provided by Section 5.175 of this code.

54 "Sec. 5.181. HEARING. The Commission shall hold a hearing
 55 and shall give the holder of the permit, [or] certified filing,
 56 or certificate of adjudication and other interested persons an
 57 opportunity to be heard and to present evidence on any matter
 58 pertinent to the questions at issue.

59 "Sec. 5.182. COMMISSION FINDING; ACTION. (a) At the
 60 conclusion of the hearing, the commission shall cancel the permit,
 61 [or] certified filing, or certificate of adjudication to the
 62 extent that it finds that:

63 "(1) any portion of the water appropriated under the
 64 permit, [or] certified filing, or certificate of adjudication has

not been put to an authorized beneficial use during the 10-year period;

"(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

"(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

"(b) In determining what constitutes a reasonable time as used in Subsection (a) (3) of this section, the commission shall give consideration to:

"(1) the expenditures made or obligations incurred by the holder in connection with the permit, ~~[or]~~ certified filing, or certificate of adjudication;

"(2) the purpose to which the water is to be applied;

"(3) the priority of the purpose; and

"(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

"Sec. 5.183. RESERVOIR. If the holder of a permit, ~~[or]~~ certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may ~~[shall]~~ allow him to retain the impoundment ~~[water-appropriation]~~ to the extent of the conservation storage capacity of the reservoir, for domestic, livestock or recreation purposes.

"Sec. 5.184. MUNICIPAL CERTIFIED FILING ~~[PERMIT]~~. Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings.

"Sec. 5.185. EFFECT OF COMMISSION INACTION. Failure of the commission to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, ~~[or]~~ certified filing, or certificate of adjudication in whole or in part.

"Sec. 5.186. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT ~~[PERMIT]~~. Once cancellation proceedings have been initiated against a particular permit, ~~[or]~~ certified filing, or certificate of adjudication and a hearing has been held, the commission shall not initiate further cancellation proceedings against the same permit, ~~[or]~~ certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing."

Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict, however, this Act is meant to be cumulative of existing law and is meant to be reconciled with existing law where possible; and should any section or provisions hereof be declared unconstitutional or invalid, such invalidity shall not impair any remaining sections or provisions of this Act ~~would~~ have been passed as to the remaining portions hereof regardless of the invalidity of any part.

Sec. 3. The fact that the present law does not provide for total and partial cancellation of certificates of adjudication, while permits and certified filings are subject to such proceedings, even though all or a part of the water is not being appropriated and beneficially used thereunder, the fact that a public need exists to make such water available for appropriation and beneficial use, and the further fact that the present law needs to be clarified so as to remove inconsistencies, create an emergency and an imperative public necessity that the

And the legislative body declares that the same

1 constitutional rule requiring bills to be read on three several
2 days in each house be suspended, and this rule is hereby suspended,
3 and that this Act take effect and be in force from and after its
4 passage, and it is so enacted.

5 * * * * *

6 Austin, Texas
7 May 9, 1973

8 Hon. William P. Hobby
9 President of the Senate

10 Sir:

11 We, your Committee on Natural Resources, to which was referred
12 S.B. No. 960, have had the same under consideration, and I am
13 instructed to report it back to the Senate with the recommendation
14 that it do pass and be printed.

15 Sherman, Chairman

Austin, Texas

May 9, 19 73

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on Natural Resources,
to which was referred S. B. No. 960, have had the same
under consideration, and I am instructed to report it back to
the Senate with the recommendation that it do _____
pass _____ and be _____ printed.


Chairman

CAS

A

(As reported by
Natural Resources
Committee)

BILL ANALYSIS

Sec. 1 - Amends Chapter 5, Subchapter E, of the Water Code.

Sec. 5.171. Definitions.

- (1) "Other interested person" (no change).
- (2) "Certified filing" (no change).
- (3) "Certificate of adjudication" (new).
Certificate issued by Texas Water Rights Commission.

Sec. 5.172. General principal. Amended to include
"certificate of adjudication."

Sec. 5.173. Cancellation in whole. Amended to include
"certificate of adjudication."

Sec. 5.174. Commission to initiate proceedings. Amended
to include "certificate of adjudication."

Sec. 5.175. Notice. (a) Amended to include "certificate
of adjudication" and to provide that notice shall be given
to those holders of permits, certified filings or
certificates of adjudication who are being considered for
cancellation. Everyone in the same watershed shall also be
given notice of the hearing.

(b) No change.

Sec. 5.176. Hearing. Amended to include "certificate of
adjudication."

Sec. 5.177. Commission finding; action. The Commission
may deem an appropriation to have been wilfully abandoned
and of no further force and effect and cancel the permit,
certified filing or certificate of adjudication if no water
has been used beneficially for an authorized purpose in a
ten-year period.

Sec. 5.178. Cancellation in part. Amended to include
"certificate of adjudication."

Sec. 5.179. Commission may initiate proceedings. Amended
to include "certificate of adjudication."

Sec. 5.180. Notice. No change.

Sec. 5.181. Hearing. Amended to include "certificate of adjudication."

Sec. 5.182. Commission finding; action. Amended to include "certificate of adjudication."

Sec. 5.183. Reservoir. Amended to include "certificate of adjudication." The commission is given discretion to allow the impoundment of water in a reservoir for domestic, livestock or recreational purposes.

Sec. 5.184. Municipal certified filing. Change of wording from "municipal permit" to "municipal certified filing."

Sec. 5.185. Effect of commission inaction. Amended to include "certificate of adjudication."

Sec. 5.186. Subsequent proceedings on same water right. Change in wording from "permit" to "water right." Amended to include "certificate of adjudication."

Sec. 2 - Repealer clause.

Sec. 3 - Emergency clause.

May 17 73
Bill by

By: Sherman

S.B. No. 960

A BILL TO BE ENTITLED

AN ACT

1
2 amending Subchapter E, Chapter 5, Water Code, providing for the
3 cancellation in whole or in part of certificates of adjudication
4 by the Texas Water Rights Commission in the same manner as permits
5 and certified filing; providing for the definition of "certificate
6 of adjudication"; providing for the general principle of
7 cancellation of certificates of adjudication, the initiation of
8 proceedings, notice, and hearing thereof; providing for certain
9 findings to be made by the commission and action to be taken;
10 allowing a holder of a permit, certified filing, or certificate
11 of adjudication to retain a reservoir for domestic, livestock,
12 and recreational purposes to the extent that he has conservation
13 storage; exempting those certified filings held by cities to the
14 extent that such filing allows diversion for municipal purposes;
15 declaring that the failure to initiate proceedings to cancel shall
16 not validate or enhance a certified filing, permit, or certificate
17 of adjudication and requiring a five-year lapse between
18 cancellation proceedings against a particular water right;
19 repealing all conflicting laws and providing a savings clause;
20 and declaring an emergency.

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

22 Section 1. Subchapter E., Chapter 5, Water Code, is hereby
23 amended to read as follows:

24 "SUBCHAPTER E. CANCELLATION OF PERMITS,
25 CERTIFIED FILINGS, AND CERTIFICATES

1 OF ADJUDICATION FOR NONUSE

2 "Section 5.171. DEFINITIONS. As used in this subchapter:

3 "(1) 'other interested person' means any person,
4 other than a record holder, who is interested in the permit or
5 certified filing, or any person whose direct interest would be
6 served by the cancellation of the permit or certified filing in
7 whole or in part; ~~and~~

8 "(2) 'certified filing' means a declaration of
9 appropriation or affidavit that was filed with the State Board
10 of Water Engineers under the provisions of Section 14, Chapter
11 171, General Laws, Acts of the 33rd Legislature, 1913; and

12 "(3) 'certificate of adjudication' means a certificate
13 issued by the Texas Water Rights Commission under Section 5.323
14 of this code.

15 "Section 5.172. GENERAL PRINCIPLE. A permit, ~~or~~ certified
16 filing, or certificate of adjudication is subject to cancellation
17 in whole or in part for 10 years' nonuse as provided by this
18 subchapter.

19 "Section 5.173. CANCELLATION IN WHOLE. If no part of the
20 water authorized to be appropriated under a permit, ~~or~~ certified
21 filing, or certificate of adjudication has been put to beneficial
22 use at any time during the 10-year period immediately preceding
23 the cancellation proceedings authorized by this subchapter, then
24 the appropriation is presumed to have been wilfully abandoned,
25 and the permit, ~~or~~ certified filing, or certificate of
26 adjudication is subject to cancellation in whole as provided by

this subchapter.

"Section 5.174. COMMISSION TO INITIATE PROCEEDINGS. When the commission finds that its records do not show that any water has been beneficially used under a permit, ~~[or]~~ certified filing, or certificate of adjudication during the past 10 years, it shall initiate proceedings, terminated by public hearing, to cancel the permit, ~~[or]~~ certified filing, or certificate of adjudication.

"Section 5.175. NOTICE. (a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, ~~[or]~~ certified filing, or certificate of adjudication. Being considered for cancellation notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of water rights pursuant to Section 5.303 of this code in the same watershed. ~~[as-shown-by-the-records-of the-commission,--Notice-shall-be-sent-by-certified-mail,--return receipt-requested,--to-the-last-address-shown-by-the-records-of the-commission,--The-commission-shall-also-send-notice-by-regular mail-to-all-other-holders-of-permits-and-certified-filings-in-the same-watershed.]~~

"(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of

supply was authorized or proposed to be made, and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

"Section 5.176. HEARING. The commission shall hold a hearing and shall give the holder of the permit, [x] certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit, [x] certified filing, or certificate of adjudication during the 10-year period.

"Section 5.177. COMMISSION FINDING; ACTION. At the conclusion of the hearing, if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, of no further force and effect, and the commission shall cancel the permit, [x] certified filing, or certificate of adjudication.

"Section 5.178. CANCELLATION IN PART. If some part of the water authorized to be appropriated under a permit, [x] certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, [x] certified filing, or certificate of adjudication is subject to partial cancellation, as provided

S.B. No. 960

by this subchapter, to the extent of the 10 years' nonuse.

"Section 5.179. COMMISSION MAY INITIATE PROCEEDINGS. When the commission finds that its records do not show proof that some portion of the water has been used during the past 10 years, it may initiate proceedings, terminated by public hearing, to cancel the permit, ~~[or]~~ certified filing, or certificate of adjudication in part.

"Section 5.180. NOTICE. The commission shall give notice of the hearing as provided by Section 5.175 of this code.

"Section 5.181. HEARING. The commission shall hold a hearing and shall give the holder of the permit, ~~[or]~~ certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

"Section 5.182. COMMISSION FINDING; ACTION. (a) At the conclusion of the hearing, the commission shall cancel the permit, ~~[or]~~ certified filing, or certificate of adjudication to the extent that it finds that:

"(1) any portion of the water appropriated under the permit, ~~[or]~~ certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period;

"(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

"(3) the holder has not been justified in the nonuse

1 or does not then have a bona fide intention of putting the unused
2 water to an authorized beneficial use within a reasonable time
3 after the hearing.

4 "(b) In determining what constitutes a reasonable time as
5 used in Subsection (a)(3) of this section, the commission shall
6 give consideration to:

7 "(1) the expenditures made or obligations incurred
8 by the holder in connection with the permit, ~~[or]~~ certified filing,
9 or certificate of adjudication;

10 "(2) the purpose to which the water is to be applied;

11 "(3) the priority of the purpose; and

12 "(4) the amount of time usually necessary to put
13 water to a beneficial use for the same purpose when diligently
14 developed.

15 "Section 5.183. RESERVOIR. If the holder of a permit,
16 ~~[or]~~ certified filing, or certificate of adjudication has
17 facilities for the storage of water in a reservoir, the commission
18 may ~~[shall]~~ allow him to retain the impoundment ~~[a-water~~
19 ~~appropriation]~~ to the extent of the conservation storage capacity
20 of the reservoir, for domestic, livestock or recreation purposes.

21 "Section 5.184. MUNICIPAL CERTIFIED FILING ~~[PERMIT]~~.
22 Regardless of other provisions of this subchapter, no portion of
23 a certified filing held by a city, town, village, or municipal
24 water district, authorizing the use of water for municipal
25 purposes, shall be cancelled if water has been put to use under
26 the certified filing for municipal purposes at any time during

1 the 10-year period immediately preceding the institution of
2 cancellation proceedings.

3 "Section 5.185. EFFECT OF COMMISSION INACTION. Failure
4 of the commission to initiate cancellation proceedings under this
5 subchapter does not validate or improve the status of any permit,
6 [ex] certified filing, or certificate of adjudication in whole
7 or in part.

8 "Section 5.186. SUBSEQUENT PROCEEDINGS ON SAME WATER RIGHT
9 [PERMIT]. Once cancellation proceedings have been initiated
10 against a particular permit, [ex] certified filing, or certificate
11 of adjudication and a hearing has been held, the commission shall
12 not initiate further cancellation proceedings against the same
13 permit, [ex] certified filing, or certificate of adjudication
14 within the five-year period immediately following the date of the
15 hearing."

16 Sec. 2. All laws or parts of laws in conflict herewith are
17 hereby repealed to the extent of such conflict, however, this Act
18 is meant to be cumulative of existing law and is meant to be
19 reconciled with existing law where possible; and should any section
20 or provisions hereof be declared unconstitutional or invalid,
21 such invalidity shall not impair any remaining sections or
22 provisions of this Act and the legislature hereby declares that
23 the same would have been passed as to the remaining portions
24 hereof regardless of the invalidity of any part.

25 Sec. 3. The fact that the present law does not provide for
26 total and partial cancellation of certificates of adjudication,

S.B. No. 960

1 while permits and certified filings are subject to such
2 proceedings, even though all or a part of the water is not being
3 appropriated and beneficially used thereunder, the fact that a
4 public need exists to make such water available for appropriation
5 and beneficial use, and the further fact that the present law
6 needs to be clarified so as to remove inconsistencies, create an
7 emergency and an imperative public necessity that the
8 constitutional rule requiring bills to be read on three several
9 days in each house be suspended, and this rule is hereby suspended,
10 and that this Act take effect and be in force from and after its
11 passage, and it is so enacted.

FORM A

COMMITTEE REPORT

Date 5/21/73

HONORABLE PRICE DANIEL, JR.

Speaker of the House of Representatives.

Sir:


We, your Committee on Natural Resources, to whom was referred S.B. No. 960, have had the same under consideration and beg to report back with recommendation that it ^{do} ~~(do not)~~ pass.

The Committee recommends that this measure be considered for the ~~Local~~ (Consent) Calendar. Record Vote ~~No~~ (Yes)

House sponsor of Senate measure: Wasson

The measure was reported from Committee by the following record vote:

17 ayes
 nays
 present, not voting
6 absent


 Chairman

This measure proposes new law.

BILL ANALYSIS

Background Information:

In 1967, the Texas Legislature enacted the Water Rights Adjudication Act which authorized the Water Rights Commission to adjudicate streams in Texas and to adjust the rights to waters in those streams. Currently, the law speaks in terms of certified filings and permits when providing for cancellation of water rights.

What This Bill Proposes To Do:

S.B. 960 would include "certificates of adjudication" among those water rights that may be cancelled in accordance with the existing cancellation statutes.

Section by Section Analysis:

Section 1. Defines "certificate of adjudication" and includes certificates of adjudication among those water rights that may be cancelled under the existing cancellation statutes.

Section 2. Provides for the repeal of conflicting laws and reconciliation with other laws when possible.

Section 3. Declares an emergency.

SUMMARY ON COMMITTEE ACTION:

Notice having been posted May 15, 1973, the Committee on Natural Resources considered S.B. 960. It was moved and seconded that S.B. 960 be sent back to the House with the recommendation that it do pass and be placed on the consent calendar.

The motion was adopted by the following votes: 17 ayes, 0 nays, 0 present not voting, and 7 absent. The measure proposes new law.

ACT amending Subchapter E, Chapter 5, Water Code, providing for the
 cancellation in whole or in part of certificates of adjudication
 the Texas Water Rights Commission in the same manner as permits
 d. certified filing; . . . ; and declaring an emergency.

Filed with the Secretary of the Senate

MAY 1 1973

Read, referred to Committee on **NATURAL RESOURCES**

MAY 10 1973

Reported favorably.

Reported adversely, with favorable Committee Substitute; Committee Substitute
 read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by

{ unanimous consent.
 _____ yeas, _____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules
 suspended by vote of _____ yeas, _____ nays.

MAY 17 1973

Read second time and { ordered engrossed.
~~passed to third reading.~~

Caption ordered amended to conform to body of bill.

MAY 17 1973

Senate and Constitutional 3-Day Rules suspended by vote of
 31 yeas, 0 nays to place bill on third reading and final passage.

MAY 17 1973

Read third time and passed by { ~~a viva voce vote.~~
 31 yeas, 0 nays.

OTHER ACTION:

Charles Schnabel

Secretary of the Senate

Engrossed

MAY 17 1973

Sent to HOUSE

W. H. Key

ENGROSSING CLERK

SB - 960

MAY 17 1973

Received from
 the Senate

Dorothy Hallman
 Chief Clerk, House of Representatives

MAY 18 1973

READ FIRST TIME
 AND REFERRED TO COMMITTEE ON

Natural Resources

Dorothy Hallman
 Chief Clerk, House of Representatives

MAY 21 1973

REPORTED FAVORABLY SENT TO PRINTER